IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 32651 of 2007(K)

PETITIONER:

THE SECRETARY, VRINDAVAN APARTMENTS,
(N.CHANDRASEKHAR),
VRINDAVAN APARTMENT OWNERS ASSOCIATION,
VYTTULA, POONITHARA, KOCHI-682019.

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

RESPONDENTS:
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1. **STATE OF KERALA,**
   REPRESENTED BY SECRETARY (TAXES),
   TRIVANDRUM.

2. **THE TAHSILDAR,**
   KANAYANNOOR TALUK,
   ERNAKULAM.
   COCHIN - 6820II

BY GOVT. PLEADER, SRI.K.P. PRADEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/11/2007, ALONG WITH W.P.(C) NO. 32652 OF 2007 THE COURT ON 14/11/2007 DELIVERED THE FOLLOWING:

ANTONY DOMINIC, J.

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W.P.(C) Nos. 32651 & 32652 OF 2007
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Dated this the 14th November, 2007

J U D G M E N T

These writ petitions are filed challenging Exts. P5 & P6 orders of assessment under the Kerala Building Tax Act (for short the Act) and the steps taken for recovery of the amounts due invoking the provisions of the Revenue Recovery Act.

2. Petitioners in these cases are apartment owners of residential complexes. By Ext. P2 in these cases, the 2nd respondent assessing officer has imposed Building Tax taking each of the whole apartment complex as one unit and on that basis tax has been demanded on the petitioners.

3. According to the petitioners, the owners of the individual apartments whose details are furnished in the writ petition had entered into individual agreements with the landlords purchasing undivided interest in the land where the building has been constructed for themselves. It is further stated that these individual owners, entered into agreements with the builder concerned and made contributions on the basis of which the building has been

constructed. According to the petitioner, the agreements also provide that the owners had agreed to pay the tax in terms of the provisions contained in the Act. On this basis, petitioners contend that it is the individual owners of the apartments who are liable to be assessed for Building Tax and that too, taking each flat separately.

4. In identical cases, this Court had interfered with similar orders of assessment and directed denovo enquiry by the assessing officer with liberty to the builder or the Apartment Owners' Association to produce evidence in support of their case. One such judgment is reported in ***Bava Sons Construction Private Limited v. State of Kerala & Others*** {2007 (2) KHC 409}. Since the facts of these cases are identical with the facts of that case, I am satisfied that the petitioners in these cases are also entitled to similar reliefs.

5. Accordingly, Exts. P5, P5(a), P5(b) and P6 orders of assessment and revenue recovery notices in these cases will stand quashed. The 2nd respondent in these cases will issue notice to the petitioners and also to the individual apartment owners, whose names and other details have been furnished in these writ petitions. Thereupon,

an enquiry will be conducted and it will be open to the petitioner or the individual owners of the apartments to adduce evidence to prove that they own undivided interest in the land and on the basis of their agreements, utilising their contribution the respective apartment was constructed. For this purpose, petitioners and the apartment owners will be permitted to make available whatever document they want and to adduce such evidence as they think necessary to prove their cases. On the basis of the evidence so adduced the 2nd respondent will re-consider the whole matter and pass fresh orders.

6. The 2nd respondent shall pass orders as above within three months from the date of receipt of a copy of this judgment.

Petitioners shall produce copy of this judgment before the 2nd respondent for compliance.

ANTONY DOMINIC
JUDGE

jan/-